

Remarks

In the Office Action, the Examiner required restriction to one of the following invention under 35 U.S.C. §121:

- I. Claims 1-5, drawn to a device, classified in class 257, subclass 1+; and
- II. Claims 6-14, drawn to a method of forming a semiconductor device, classified in class 438, subclass 286.

In response, Applicants hereby elect with traverse to prosecute the invention of Group II, drawn to a method of forming a semiconductor device, at this time. However, Applicants respectfully traverse the requirement and request that the Examiner reconsider and withdraw the restriction.

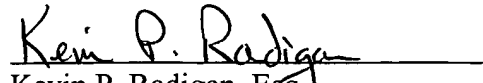
There are two criteria for a proper requirement of restriction, namely, (1) the invention must be independent and distinct, and (2) there must be a serious burden on the Examiner if restriction is not required. 35 U.S.C. §121 states “[I]f two or more independent and distinct inventions are claimed in one application, the Commissioner may require the application to be restricted to one of the inventions.”

If there is no burden, then restriction, regardless of the content of the claims, is not proper. In this case, Applicants respectfully submit that the subject matter recited in the Group I claims is closely related to the methods recited in the Group II claims. In fact, Applicants respectfully submit that a complete search of either invention should entail an examination of the other referenced class and subclass. Thus, because of the closeness of the subject matter, and the probable overlapping searches, Applicants respectfully submit that there would be little additional burden on the Examiner to examine the Group I claims in one application with the elected Group II claims.

For the above reasons, Applicants respectfully request reconsideration and withdrawal of the outstanding restriction requirement.

Any questions regarding this communication can be directed to the undersigned.

Respectfully submitted,


Kevin P. Radigan, Esq.
Attorney for Applicants
Registration No.: 31,789

Dated: August 24, 2004.

HESLIN ROTHENBERG FARLEY & MESITI P.C.
5 Columbia Circle
Albany, New York 12203-5160
Telephone: (518) 452-5600
Facsimile: (518) 452-5579